

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	8:95CR146-7
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
JOSE DELTORO-AGUILERA,)	
)	
Defendant.)	
_____)	

This matter is before the court on the defendant’s pro se motion for leave to appeal in forma pauperis (Filing No. [554](#)). No separate notice of appeal has been filed, but the defendant’s motion requests the entry of “an Order granting leave to appeal in forma pauperis from the Judgment entered on March 9, 2016” (*id.*), which the court construes as referencing an order that was entered on March 9, 2016 (Filing No. [553](#)). That order denied a second motion for reduction of sentence (Filing No. [552](#)). A pro se motion for leave to appeal in forma pauperis has been held sufficient to constitute a notice of appeal. See [Turner v. Armontrout, 922 F.2d 492, 494 \(8th Cir. 1991\)](#) (citing [U.S. v. Gibson, 568 F.2d 111, 112 \(8th Cir. 1978\)](#)); see also [F.R.A.P. 3\(c\)](#) (contents of notice of appeal).

The defendant’s motion, however does not appear to have been filed within 14 days after entry of the order being appealed, as required by [Rule 4\(b\)\(1\)](#) of the Federal Rules of Appellate Procedure. The motion and supporting declaration are both undated, and there is no indication that the mailing was deposited in the correctional institution’s internal mail system on or before March 23, 2016. See [F.R.A.P. 4\(c\)\(1\)](#) (“prison mailbox” rule). The postmark and processing stamps on the mailing envelope are all dated March 24, 2016 (Filing No. [554](#) at CM/ECF pp. 4-5). The defendant has not made a showing of excusable neglect or good cause for granting an extension of time. See [F.R.A.P. 4\(b\)\(4\)](#).

Because the defendant was determined to be financially unable to obtain an adequate defense in a criminal case, he may proceed in forma pauperis on appeal without further authorization unless the district court certifies that the appeal is not taken in good faith or finds that the defendant is not otherwise entitled to proceed in forma pauperis. See [F.R.A.P. 24\(a\)\(3\)](#). The court will not make such a certification or finding in this case. The defendant's motion for leave to appeal in forma pauperis therefore will be denied without prejudice and the clerk will be directed to process the appeal even though it appears to be untimely. See [United States v. Watson, 623 F.3d 542, 544 \(8th Cir. 2010\)](#) ([Rule 4\(b\)](#) is non-jurisdictional claim processing rule).

Accordingly,

IT IS ORDERED:

1. The defendant's motion for leave to proceed in forma pauperis on appeal (Filing No. [554](#)) is denied without prejudice.
2. The clerk of the court shall process the appeal without requiring payment of an appeal fee and shall forward a copy of this memorandum and order to the United States Court of Appeals for the Eighth Circuit.

April 11th, 2016.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge